

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION OF
WWC HOLDING CO., INC. DBA CELLULAR-
ONE® SEEKING DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS
CARRIER THAT MAY RECEIVE FEDERAL
UNIVERSAL SERVICE SUPPORT**

) **CASE NO. WST-T-05-1**

) **NOTICE OF REQUEST FOR
ADDITIONAL PUBLIC
COMMENT**

) **ORDER NO. 29791**

On February 17, 2005, WWC Holding Co., Inc. d/b/a CellularOne® (“Western Wireless” or the Company) submitted an Application requesting that it be designated as a federal eligible telecommunications carrier (ETC) in certain service areas in Idaho. ETC designation would allow Western Wireless to receive federal universal service support. 47 U.S.C. § 214(e). On April 1, 2005, the Commission issued a Notice of Modified Procedure seeking comments on the Application. The Idaho Telephone Association (“ITA”) and Citizens Telecommunications Company of Idaho dba Frontier Communications of Idaho (“Frontier”) moved to intervene. The Commission granted intervention in Order Nos. 29722 and 29734, respectively.

On April 14, 2005, ITA filed a Motion to Dismiss the Application. ITA argued that the Application failed to state a claim upon which relief could be granted or, alternatively, that the Commission should hold an evidentiary hearing on the Application as it applies to rural telephone company service areas. Western Wireless filed a response urging the Commission to deny ITA’s Motion.

In this Order, we grant in part the Western Wireless Application and grant in part and deny in part ITA’s Motion. As set out in greater detail below, we: (1) grant immediate ETC designation to Western Wireless in the non-rural telephone company service areas identified in the Application; (2) seek additional public comment on the merits of recent Federal Communications Commission (FCC) guidelines regarding ETC designations; and (3) determine to convene a technical hearing on the Western Wireless Application as it applies to rural telephone company service areas.

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BACKGROUND

A. ETC Standards

The Commission has jurisdiction and authority to designate Western Wireless an ETC pursuant to the federal Telecommunications Act of 1996 as set forth in 47 U.S.C. § 214(e)(1)-(2); *Idaho Code* § 62-615(1); and 47 C.F.R. § 54.101. To be designated an ETC, the telecommunications provider must: (1) be a “common carrier” as defined by 47 U.S.C. § 153(10); (2) offer throughout its proposed service areas the universal services set forth in 47 C.F.R. § 54.101(a) either by using its own facilities or a combination of its own facilities and the resale of another carrier’s services; and (3) must advertise the availability of its universal service offering and the charges therefore using media of general distribution. 47 U.S.C. 214(e)(1).

In addition, in those service areas that are already served by an incumbent local exchange carrier (ILEC), the Act provides that, “[u]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier.” 47 U.S.C. § 214(e)(2). For those service areas served by a rural telephone company (such as members of ITA), the Act further provides that before “designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find the designation is in the public interest.” *Id.* Moreover, if the applicant seeks ETC designation in a rural telephone company service area and the applicant does not serve that area in its entirety, the Commission must redefine the rural service area consistent with the recommendations of the Federal-State Joint Board on Universal Service in order to grant ETC status. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207.

B. The Application

Western Wireless requests ETC designation in both rural and non-rural telephone service areas. Western Wireless has requested immediate designation in all three of the non-rural wire centers identified in the Application and the one rural telephone company service area that it serves in entirety. App., Atch. 1. Western Wireless seeks conditional ETC designation in the remaining rural wire centers pending service center redefinition pursuant to 47 C.F.R. § 54.207. App., Atch. 2

Qwest Corporation currently serves all of the non-rural wire centers identified in the Application, which include Emmett, New Plymouth, and Weiser. Farmers Mutual Telephone Company serves the one rural telephone company service area that Western Wireless serves in its entirety and for which it seeks immediate designation. The Farmers Mutual service area includes the wire centers of Fruitland and NuAcres.

Western Wireless asks for conditional ETC designation in 18 different wire centers located in rural telephone company service areas.¹ These rural wire centers are served by four different carriers, including Cambridge Telephone Service Company, Frontier, Midvale Telephone Exchange, Inc., and Qwest (North). Cambridge Telephone, Frontier, and Midvale are ITA members.

Western Wireless argues that its Application meets the applicable legal standards and it should be designated as an ETC, because (1) it meets the basic ETC service, functionality, and advertising requirements; (2) ETC designation is in the public interest; and (3) redefining the rural telephone company service areas is consistent with the recommendations of the Federal-State Joint Board on Universal Service as required pursuant to 47 C.F.R. § 54.207.

C. Procedural History

Shortly after Western Wireless filed its Application with the Commission, the FCC adopted new rules pertaining to ETC designation proceedings. *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (rel. March 17, 2005) 2005 WL 646635 (FCC) (“FCC Rules”). See Attachment A. The FCC Rules build on the statutory framework outlined above and require an ETC applicant to demonstrate: (1) a commitment and ability to provide supported services; (2) the ability to remain functional in emergencies; (3) a commitment to consumer protection and service; (4) a local usage plan comparable to that of the incumbent LEC; and (5) recognition that the carrier may someday be asked to provide equal access. In order to meet the above standards, the FCC Rules require various reporting requirements, including a five-year network improvement plan demonstrating how universal

¹ The 18 rural wire centers identified in the Application are: Cambridge, Council, Cuprum, and Indian Valley in the Cambridge Telephone Company service area; Cascade, Donnelly, Garden Valley, Horseshoe Bend, McCall, New Meadows, Riggins, Sweet, and White Bird in the Frontier service area; Midvale in the Midvale Telephone Exchange service area; and Cottonwood, Grangeville, Kamiah, and Kooskia in the Qwest (North) service area. It is not clear whether Qwest is a rural telephone company in its North service area; nonetheless, this is how Western Wireless has characterized these wire centers.

support funds will be used to improve coverage, signal strength, or capacity that would not otherwise occur absent receipt of high-cost support.

The FCC's order encouraged State commissions to adopt the new FCC Rules when deciding whether a carrier should be designated as an ETC. FCC Rules at ¶ 1. The FCC also clarified the "public interest" analysis and urged State commissions to utilize this analysis. *Id.* at ¶ 3. The FCC observed that the new rules will "create a more rigorous ETC designation process" and "improve the long-term sustainability of the [federal] universal service fund." *Id.* at ¶¶ 1-2.

On April 1, 2005, the Commission issued the Notice of Application and Notice of Modified Procedure seeking comments on both the Western Wireless Application and the new FCC Rules. Order No. 29749 at 2. Comments were due April 29, 2005. The Commission received timely comments from Western Wireless, the Commission Staff, Frontier, and CenturyTel of the Gem State, Inc. and CenturyTel of Idaho, Inc. ("CenturyTel").

THE MOTION TO DISMISS

On April 14, 2005, ITA filed a Motion to Dismiss the Application. ITA argued that the Western Wireless Application should be dismissed because the Application does not conform to the new FCC Rules. Motion at 5. In the alternative, ITA asserted that the Commission should not process the Application under Modified Procedure to the extent the Application seeks ETC designation in rural telephone company service areas. *Id.* In these areas, ITA insisted an evidentiary hearing is necessary to apply a fact-intensive, public-interest analysis before granting an ETC application. *Id.*

On April 28, 2005, Western Wireless filed a timely response to ITA's Motion arguing that the FCC Rules do not and should not apply to the Application. Western Wireless maintained that the FCC Rules only apply to those ETC applications filed with the FCC after January 1, 2006, the effective date of the rules. Answer at 1-2. Therefore, the FCC Rules do not apply to the instant Application. Moreover, according to Western Wireless, even if the Commission decided to adopt the FCC Rules, they should not be applied to the Western Wireless Application because the rules were not in effect when the Application was filed.

Western Wireless further suggested that if the Commission wants to adopt the FCC Rules, it should do so through a separate rulemaking docket. *Id.* at 4-5. With respect to ITA's request for a hearing, Western Wireless argued that a hearing is not necessary in order to

evaluate the public interest with regard to the rural areas identified in the Application. The Company insisted that its Application and comments address the elements necessary to conduct an appropriate public interest analysis. *Id.* at 5-6.

THE COMMENTS

A. Western Wireless

Western Wireless argued that the Commission should grant the Application in its entirety without resorting to a hearing. Western Wireless further stated that its Application meets the public interest test set forth in the FCC's *Virginia Cellular Order* and adopted by this Commission in the ClearTalk/Nextel decision. *See* Order No. 29541.

Western Wireless admitted that the filing does not meet the new FCC guidelines but argued that the new standards should not apply to this Application. In the alternative, the Company insisted that its Application is generally consistent with the new FCC Rules, and implied that it would be willing to comply with at least some of the new requirements.

B. The Commission Staff

Staff stated that the Application does not have enough information to allow Staff to: (1) conduct an appropriate public interest determination; or (2) analyze whether it is appropriate to redefine the rural service areas at the wire center level. In addition, Staff supported that the Commission use the new FCC Rules as guidelines relevant to the Western Wireless Application. However, Staff recommended that the Commission put the FCC Rules out for additional comment before applying them in the instant case.

C. Frontier

Frontier asserted that Western Wireless has not met the public interest test and failed to demonstrate that the benefits of ETC designation in the rural areas identified in the Application outweigh the costs. Frontier also suggested that the Commission require Western Wireless to meet all of the conditions recommended in the FCC Rules. Because the Western Wireless Application does not meet these standards, Frontier supported ITA's Motion to Dismiss.

D. CenturyTel

CenturyTel did not comment directly on the merits of the Western Wireless Application but recommended that the Commission adopt new ETC designation guidelines

based, in part, on the new FCC Rules. However, CenturyTel encouraged the Commission to go further than the FCC Rules and adopt more stringent ETC standards. In addition, CenturyTel supported ITA's Motion to Dismiss.

DISCUSSION AND FINDINGS

1. The ITA Motion. We turn first to ITA's Motion to Dismiss. After reviewing the Motion, the Application and the comments, we deny in part and grant in part ITA's Motion. More specifically, we deny ITA's Motion to Dismiss the Application. It is undisputed that Western Wireless's Application was filed before the FCC issued its new ETC rules. Indeed, our Notice of Application implicitly recognized this when we requested interested persons to separately address both the merits of the Application and the new ETC guidelines set forth in the FCC Rules. *See* Order No. 29749 at 2. Consequently, we find that it would be unreasonable to dismiss Western Wireless's Application.

We grant that part of ITA's Motion requesting an evidentiary hearing on Western Wireless's Application seeking ETC designation in rural telephone company's service areas and wire centers. We find that there is a material dispute whether it is in the public interest to grant Western Wireless ETC designation as it applies to the rural areas. An evidentiary hearing will allow all the parties to present evidence and allow the Commission to develop the record more fully. An evidentiary hearing will also allow the parties to address whether redefining the rural telephone company service areas is reasonable and consistent with the recommendations of the Federal-State Joint Board on Universal Service.

Having determined that an evidentiary hearing is appropriate, the Commission shall separately issue a Notice of Hearing. Those carriers that have either formally intervened or provided written comments in this docket shall be considered parties in the evidentiary phase of this case. The Commission requests that the parties recommend a proposed schedule for the filing of prefiled testimony and a proposed date for the hearing. This proposed schedule should take into account the additional public comment period set forth in this Order and allow the parties sufficient time to respond to the Commission's decision with regard to the new FCC Rules.

2. ETC Designation in the Non-Rural Service Areas. We next address Western Wireless's request for ETC designation in the three identified non-rural wire centers served by

Qwest. After reviewing the Application, we find that Western Wireless has adequately demonstrated that it meets the standards necessary for ETC designation in the non-rural areas. Moreover, none of the comments specifically objected to granting ETC designation in the non-rural areas served by Qwest.² Therefore, consistent with past Commission decisions, the Commission grants immediate ETC designation to Western Wireless in the non-rural wire centers of Emmett, New Plymouth, and Weiser.

The federal Telecommunications Act treats rural and non-rural service areas differently for the purposes of ETC designation. When a carrier meets the service requirements set forth in 47 U.S.C. § 214(e)(1) and requests designation in a non-rural area already served by an ILEC, the statute provides that the Commission shall designate more than one common carrier as an ETC. 47 U.S.C. § 214(e)(2). In contrast, when a carrier meets the statutory ETC requirements and requests designation in a rural area already served by an ILEC, the federal Act provides the State commission with more discretion, stating that the State commission may grant ETC designation to the additional carrier provided that ETC designation for the additional carrier is in the public interest. *Id.*³

This different treatment demonstrates that there are public interest concerns regarding ETC designation in the rural areas served by an ILEC that are different from the concerns that exist regarding ETC designation in a non-rural area served by an ILEC. Because of these different concerns and based on the disputes raised in the comments, the Commission has determined that an evidentiary hearing is warranted in order to fully contemplate the effects of ETC designation for Western Wireless in the rural telephone company service areas. However, the same concerns and disputes have not been raised with regard to the non-rural service areas identified in the Western Wireless Application.

² Qwest did not file comments regarding the Western Wireless Application.

³ 47 U.S.C. § 214(e)(2) states:

Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

With respect to the non-rural service areas identified in the Application, Western Wireless has adequately demonstrated that it meets the basic ETC service, functionality, and advertising requirements set forth in 47 U.S.C. § 214(e)(1). In addition, the Commission finds that designating Western Wireless an ETC in the non-rural service areas is “consistent with the public interest, convenience, and necessity” pursuant to 47 U.S.C. § 214(e)(2).

First, the Commission finds that Western Wireless is a common carrier as defined by 47 U.S.C. § 153(10). Second, the Commission finds that Western Wireless offers throughout its proposed service areas the universal services set forth in 47 C.F.R. § 54.101(a) by using its own facilities or a combination of its own facilities and the resale of another carrier’s services. The universal service requirements provided by Western Wireless are:

- (1) Voice-grade access to the public switched network;
- (2) Various local usage offerings;
- (3) Out-of-band digital signaling and in-band multi-frequency signaling as functional equivalents to dual tone multi-frequency signaling;
- (4) A dedicated message path to satisfy the requirement of single-party service;
- (5) Access to emergency services by dialing “911”;
- (6) Access to operator services;
- (7) Access to interexchange service either through direct dialing or by use of an access code;
- (8) Access to directory assistance by dialing “411” or 555-1212; and
- (9) Toll blocking for qualifying Lifeline customers.

Third, the Commission finds that the Western Wireless pledge to advertise the availability of its universal service offerings provided it is designated an ETC, is adequate to meet the advertising requirements of 47 U.S.C. § 214(e)(1). Fourth, the Commission finds that designating Western Wireless as an ETC in the non-rural areas identified in the Application is consistent with the public interest, convenience, and necessity pursuant to 47 U.S.C. § 214(e)(2). *See* Order No. 29686.

The Commission notes that the non-rural service areas are all within Qwest's service territory and finds that increased competition in these areas is in the public interest. Further, without any identified drawbacks to ETC designation in the non-rural areas, the benefits of designation appear to outweigh the costs; thus, ETC designation is consistent with the public interest. In sum, because Western Wireless has demonstrated that it meets the requirements of 47 U.S.C. § 214(e)(1) and 47 U.S.C. § 214(e)(2); there are no comments raising disputes specific to ETC designation in the non-rural areas; and consistent with past decisions; the Commission approves Western Wireless as an ETC in the non-rural service areas currently served by Qwest.

3. The FCC Rules. As noted above, the FCC encouraged State commissions to adopt the new FCC Rules when processing an application for ETC designation. The FCC also urged State commissions to utilize the new public interest analysis. Pursuant to these invitations, our Notice of Modified Procedure solicited public comments addressing "the requirements in the recent FCC order." Order No. 29749 at 2. Based upon our review of the comments, we find that the comments filed in this case do not provide sufficient analysis of the new FCC Rules. Specifically, the Commission would like a rule-by-rule analysis explaining whether each rule is consistent with past Commission decisions and whether the rule would provide additional guidance that would help inform the Commission's consideration of the Western Wireless Application. Therefore, the Commission seeks additional comment on the FCC Rules.

Under *Idaho Code* § 62-615 the Commission may "promulgate rules and/or procedures necessary to carry out the duties authorized or required by the federal telecommunications act of 1996." Pursuant to this authority and federal statute, the Commission issues the following notice seeking additional comment on the merits of the new FCC Rules. After considering the comments, the Commission will promulgate an Order describing the procedures (if any) the Commission chooses to follow. This process will allow Western Wireless the opportunity to address any new standards that might be adopted in the evidentiary hearing.

REQUEST FOR ADDITIONAL PUBLIC COMMENT

YOU ARE HEREBY NOTIFIED that the FCC recently issued an Order and adopted new rules for ETC designation proceedings in which the FCC acts pursuant to 47 U.S.C. § 214(e)(6). *See In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket

No. 96-45 (rel. March 17, 2005) (“FCC Rules”). See Attachment A. These rules require various reports and specific plans in order for the applicant to demonstrate (1) a commitment and ability to provide supported services; (2) the ability to remain functional in emergencies; (3) a commitment to consumer protection and service; (4) a local usage plan comparable to that of the incumbent LEC; and (5) recognition that the carrier may someday be asked to provide equal access. In its order the FCC urges the states to adopt the rules when deciding whether a carrier should be designated as an ETC pursuant to 47 U.S.C. § 214(e)(2). *Id.*

YOU ARE FURTHER NOTIFIED that the Commission is considering adopting the FCC Rules and would like public comment on whether the Commission should adopt the rules. These comments should address each rule separately and discuss whether the rule is consistent with past Commission decisions and whether the rule would provide additional guidance that would help inform the Commission’s consideration of the Western Wireless Application as it applies to the identified rural service areas.

YOU ARE FURTHER NOTIFIED that any person desiring to state a position on the FCC Rules and whether the Commission should adopt these rules may file a written comment in support or opposition with the Commission within twenty-one (21) days from the date of this Notice. Written comments concerning these rules shall be mailed to the Commission and the parties listed in the Commission’s Notice of Parties.

YOU ARE FURTHER NOTIFIED that the Notice of Parties is available from the Commission Secretary or on the Commission web site at www.puc.idaho.gov. Click on the “File Room” icon and then the “Telecommunications Cases” icon. The Notice of Parties is available under the case number, WST-T-05-1.

YOU ARE FURTHER NOTIFIED that the comments should contain the case caption and case number shown on the first page of this document. Persons desiring to submit comments via e-mail may do so by accessing the Commission’s home page located at www.puc.idaho.gov. Click the “Comments and Questions” icon, and complete the comment form, using the case number as it appears on the front of this document.

ORDER

IT IS HEREBY ORDERED that the Idaho Telephone Association's Motion to Dismiss is denied in part and granted in part. ITA's Motion to Dismiss the Application is denied. ITA's request for an evidentiary hearing to consider the merits of the Western Wireless Application as it applies to rural telephone company service areas is granted.

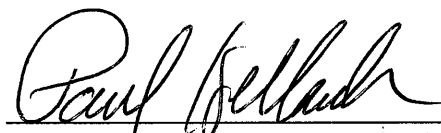
IT IS FURTHER ORDERED that the Application of Western Wireless for ETC designation is granted in part as it relates to the three non-rural telephone company wire centers of Emmett, New Plymouth, and Weiser.

IT IS FURTHER ORDERED that the Commission Secretary issue a Notice of Parties in this matter comprised of those persons who have either been granted intervention or who filed written comments in this proceeding.

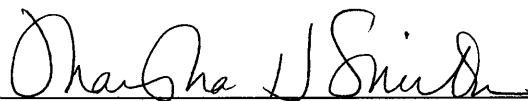
IT IS FURTHER ORDERED that persons interested in commenting upon the new FCC Rules regarding ETC designation and the public interest analysis may file their written comments no later than twenty-one (21) days following the date of this Order. Persons submitting written comments should serve their comments on other parties to this case.

IT IS FURTHER ORDERED that the parties develop a hearing schedule for the evidentiary hearing. The Commission will issue a separate Notice of Hearing at a later date.

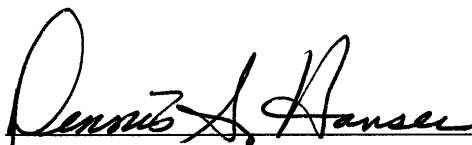
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 27th
day of May 2005.



PAUL KJELLANDER, PRESIDENT

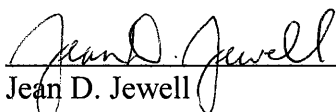


MARSHA H. SMITH, COMMISSIONER



DENNIS S. HANSEN, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

APPENDIX A – FINAL RULES

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54 – UNIVERSAL SERVICE**Subpart C – Carriers Eligible for Universal Service Support**

1. Section 54.202 is added to subpart C to read as follows:

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

(a) On or after the effective date of these rules, in order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

- (1) (A) commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will (1) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (2) provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer's equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier's facilities to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment; and

(B) submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.
- (2) demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.
- (3) demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.
- (4) demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.

(5) certify that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) Any common carrier that has been designated under section 214(e)(6) as an eligible telecommunications carrier or that has submitted its application for designation under section 214(e)(6) before the effective date of these rules must submit the information required by paragraph (a) of this section no later than October 1, 2006, as part of its annual reporting requirements under section 54.209.

(c) *Public Interest Standard.* Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determine that such designation is in the public interest. In doing so, the Commission shall consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering. In instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the Commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the eligible telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. In its creamskimming analysis, the Commission shall consider other factors, such as disaggregation of support pursuant to § 54.315 by the incumbent local exchange carrier.

(d) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send the relevant public notice seeking comment on any petition for designation as an eligible telecommunications carrier on tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable, by overnight express mail.

2. Section 54.209 is added to subpart C to read as follows:

§ 54.209 Annual reporting requirements for designated eligible telecommunications carriers.

(a) A common carrier designated under section 214(e)(6) as an eligible telecommunications carrier shall provide:

- (1) a progress report on its five-year service quality improvement plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level;
- (2) detailed information on any outage, as that term is defined in 47 C.F.R. § 4.5, of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 911 special facility, as defined in 47 C.F.R. § 4.5(e). Specifically, the eligible telecommunications carrier's annual report must include information detailing: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the

geographic areas affected by the outage; (e) steps taken to prevent a similar situation in the future; and (f) the number of customers affected.

- (3) the number of requests for service from potential customers within the eligible telecommunications carrier's service areas that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers, as set forth in §54.202(a)(1)(A);
- (4) the number of complaints per 1,000 handsets or lines;
- (5) certification that it is complying with applicable service quality standards and consumer protection rules;
- (6) certification that the carrier is able to function in emergency situations as set forth in §54.201(a)(2);
- (7) certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- (8) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) *Filing deadlines.* In order for a common carrier designated under section 214(e)(6) to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information in paragraph (a) no later than October 1, 2006, and thereafter annually by October 1 of each year. Eligible telecommunications carriers that file their reports after the October 1 deadline shall receive support pursuant to the following schedule:

- (1) Eligible telecommunication carriers that file no later than January 1 of the subsequent year shall receive support for the second, third and fourth quarters of the subsequent year.
- (2) Eligible telecommunication carriers that file no later than April 1 of the subsequent year shall receive support for the third and fourth quarters of the subsequent year.
- (3) Eligible telecommunication carriers that file no later than July 1 of the subsequent year shall receive support for the fourth quarter of the subsequent year.

3. Section 54.307 is amended by adding paragraph (d) to subpart D to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a)-(c) * * * [unchanged]

(d) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (c) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it submits the data required pursuant to paragraph (b) of this section within 60 days of that effective date. Thereafter, the eligible telecommunications carrier must submit the data required in paragraph (b) of this section pursuant to the schedule in paragraph (c).

4. Section 54.313 is amended by adding paragraph (d)(3)(vi) to subpart D to read as follows:

§ 54.313 State certification of support for non-rural carriers.

(a)-(d)(3)(v) * * * [unchanged]

(vi) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to § 54.309 or § 54.311, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d).

5. Section 54.314 is amended by adding paragraph (d)(6) to subpart D to read as follows:

§ 54.314 State certification of support for rural carriers.

(a)-(d)(5) * * * [unchanged]

(6) (vi) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to §§54.301, 54.305, or 54.307 or part 36 subpart F of this chapter, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d).

6. Section 54.809 is amended by adding the last sentence to paragraph (c) to subpart D to read as follows:

§ 54.809 Carrier certification.

(a)-(b) * * * [unchanged]

(c) *Filing deadlines.* In order for a price cap local exchange carrier or an eligible telecommunications carrier serving lines in the service area of a price cap local exchange carrier to receive interstate access universal service support, such carrier shall file an annual certification, as described in paragraph (b) of this section, on the date that it first files its line count information pursuant to § 54.802, and thereafter on June 30 of each year. Such carrier that files its line count information after the June 30 deadline shall receive support pursuant to the following schedule:

- (1) Carriers that file no later than September 30 shall receive support for the fourth quarter of that year and the first and second quarters of the subsequent year.
- (2) Carriers that file no later than December 31 shall receive support for the first and second quarters of the subsequent year.
- (3) Carriers that file no later than March 31 of the subsequent year shall receive support for the second quarter of the subsequent year.